IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3302 OF 2005

Pramod Vijay Nirmalkar & Ors. ...Petitioners.
Vs.
The Charity Commissioner & Ors. ...Respondents.
....
Mr.Shriram Kulkarni for the Petitioners.
.....

CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 21, 2005.

P.C.:

The primary relief which has been sought in these proceedings is for a direction by this Court in the exercise of its jurisdiction under Articles 226 and 227 of the Constitution, to set aside the order dated 8th December 2003 passed by the Learned Single Judge of this Court in Writ Petition 8643 of 2003. Further reliefs have been sought to the effect that (i) This Court should set aside resolutions passed at a meeting of the General Body of the Nasik Diocesan Council, a Public Trust registered under the Bombay Public Trusts Act, 1950, on 27th June 2004; (ii) Respondent Nos.1 to 5 should hold an election to the Council on the basis of the list of members existing on 13th March 1997; and

(iii) This Court should adopt proceedings against Respondent Nos.7 to 38 for obtaining “collusive order and playing fraud upon this Court”.

We have perused the order of the Learned Single Judge dated 8th December 2003. The order reads thus:

> “1. Heard learned counsel for the parties.
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> -2. Mr. Gangal, learned counsel for Respondent Nos.1 to 11, at the outset submitted that the election officer will have to hold the elections as directed by the impugned order dated 02/05/2003 keeping in view the resolutions passed by the General Body concerning the elections. Mr. Palekar, learned A. G. P. for Respondent Nos.12 to 15 agrees with the submission made by Mr.Gangal. In view of this, Mr. Shah, learned counsel for the Petitioner did not press this petition. The Writ Petition is dismissed as not pressed. Needless to say that it is open for the Petitioner to bring relevant resolution/ resolutions passed by the General Body concerning the elections to the notice of the Election Officer.”

The submission which has been urged before this Court in the present case proceeds on the basis that directions have been issued by this Court for the holding of elections on the basis of certain resolutions passed by the General Body of the Trust and it is urged that these resolutions run contrary to a scheme settled by this Court on 13th May 1997 in First Appeal 1587 of 1996. The order of the Learned Single Judge dated 8th December 2003, however, does not, in our view, contain any such direction and the apprehension of the Petitioners that there is a direction by the Court to hold elections in a manner that would run contrary to the scheme settled by the Court is erroneous. The order of the Learned Single Judge records the statements of Counsel before the Court in those proceedings. The petition was not pressed before the Court in view of those statements. The order of the Court cannot be regarded as containing any direction of the Court in regard to the manner in which elections would have to be held. In the circumstances, we are of the view that the relief which has been sought in prayer clause (1) of the petition for setting aside the order of the Learned Single Judge of 8th December 2003, cannot be granted. In any event, the jurisdiction under Articles

226 and 227 of the Constitution cannot be pressed in aid to set aside an order passed by a Learned Single Judge of the High Court in a duly constituted proceeding.

In so far as the grievance of the Petitioners in relation to the resolutions passed at the General Body meeting of 27th June 2004 and the holding of elections is concerned, we are of the view that it would be appropriate to leave it open to the Petitioners to adopt such remedies as are available in law to challenge the resolutions or for the purposes of obtaining appropriate directions from a competent forum in accordance with law in regard to the elections. The exercise of the jurisdiction under Article 226 of the Constitution is, in the circumstances, clearly not warranted. We grant liberty to the Petitioners to adopt proceedings in accordance with law. The Petition is accordingly dismissed.

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